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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/055,438	01/23/2002	Daniel A. De Schryver	FR-7095	7949

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EXAMINER

SZEKELY, PETER A

ART UNIT

PAPER NUMBER

1714

DATE MAILED: 08/12/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/055,438

Applicant(s)

DE SCHRYVER ET AL.

Examiner

Peter Szekely

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-72 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-72 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-5, 7-19, 24-68, 70 and 72 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Hecht et al 4,338,243, in column 1, lines 51-55, and Garrison, Jr. 4,708,980, in column 1, lines 36-42 disclose that zinc sulfide and zinc borate are ineffective as inorganic flame retardant synergists in PET. Applicants' Examples show only hydrated zinc borate as an effective flame retardant. Applicants' disclosure is non-enabling.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-6, 8-10, 17-23, 32-43, 53-61 and 64-72 are rejected under 35 U.S.C. 102(b or e) as being anticipated by Fuhr et al. 5,021,488, Kyo et al. 4,171,330,

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Nakahashi et al. 5,543,452, Gareiss et al. 5,712,336, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974 or Chisolm et al. 6,300,405

5. Fuhr et al. disclose polyamide, PTFE, zinc borate (hydrates) and other flame proofing agents in claim 1, glass fibers in claim 8 and chlorine containing aliphatic compounds in claim 9. For brominated polystyrenes, see the column overlapping columns 7 and 8, for EPR and EPDM, see column 8, lines 41-42, for species of polyamides see column 4, lines 14-17, while Firebrake ZB is shown in column 9, lines 35-36. Kyo et al. teach polyamide, polyester and aromatic halogen compounds in claims 1-23, zinc borate in column 10, line 33 and polyolefins in column 11, lines 58. Nakahashi et al. recite polyamide, aliphatic olefin polymer and brominated polystyrene in claim 13, 50-80% bromination in column 3, line 16 and column 5, lines 20-26 and zinc borate in column 6, lines 48-49. For specific polyolefins, see column 7, lines 25-36, for specific nylons and Pyrocheck 68PB, see the paragraph overlapping columns 7 and 8 and for glass fibers, see column 7, line 4. Gareiss et al. show polyester and brominated flame-retardant in claim 1, zinc sulfide and zinc borate in column 4, lines 11-14, EPM and EPDM in column 4, lines 55-62, PTFE in column 9, lines 22-30 and glass fibers in column 8, line 50. Ogo et al. divulge polyamide in claim 1, halogenated polystyrene in claim 14, fibers in column 15, lines 28-40, polyolefins in column 16, lines 38-59, ethylene/methacrylic acid copolymer in column 19, lines 3-12, brominated polystyrene in the paragraph overlapping columns 20 and 21 and zinc borate in column 21 line 38. Tjahjadi et al. reveal polyamide, glass fiber, halogenated flame retardants and polyolefin in claims 1, 9, 10 and 16-18, polyethylene and polypropylene in the paragraph

overlapping columns 2 and 3, zinc sulfide in column 3, lines 19-20, polyesters in column 5, line 40 and PTFE in column 4, line 48-50. Chisolm et al. display polyester in claim 1, polyolefins in claim 19, zinc sulfide in column 6, line 29, halogenated flame retardants in column 6, lines 43-67 and PTFE in column 7, lines 10-12. Applicants' claims are not novel.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

8. Claims 1-72 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuhr et al. 5,021,488, Kyo et al. 4,171,330, Nakahashi et al. 5,543,452, Ogo et al. 5,849,826, Tjahjadi et al. 5,863,974 or Chisolm et al. 6,300,405, in view of Mathews et al. 4,187,113, Kinoshita et al. 5,824,394, Hecht et al. 4,338,243, Frye 4,387,167,

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Garrison, Jr. 4,708,980, Myszak, Jr. 5,409,980, Bryant et al. 5,936,021, Kamei et al. 5,874,176 or Basset et al. 6,235,837.

9. The primary references have been discussed already in paragraph #5. Mathews et al. exhibit polyester and polypropylene having an MFI of 2 to 5 in Example 2 to 5. Kinoshita et al. present polyester in claim 1, another polymer in claim 16, and polypropylene with an MFI of 4.5 blended with the polyester in Example 6. Hecht et al. relate PET and glass fiber in claims 1-2, halogenated flame-retardants in the paragraph overlapping columns 4 and 5 and ethylene/ methacrylic acid copolymer in column 3, lines 6-8. Frye discusses silicone resins added as flame-retardants to polyolefins and polyamide in claims 1-3. The revelations of Garrison, Jr. are similar to those of Hecht et al. Myszak, Jr. describes Firebrake ZB in column 13, lines 54-58 and polypropylene, PET and nylon 6 in claim 26. Bryant et al. list polyamide, polyester and polyolefin in claim 3 and polydimethylsiloxane treated fumed silica in claim 22. Kamei et al. relate polyamide in claim 1 and polypropylene having an MFI of 1gram/10 minutes in claim 8. Basset et al. cite polyamide and polypropylene having an MFI of less than 0.5 grams/10 minutes in claim 1. The cited secondary references prove that all of applicants' limitations are known and that all materials cited in the instant specification have been used successfully previously in polyesters and polyamides, and in the absence of unexpected results, the examiner holds that their use would have been obvious to having ordinary skill in the art, at the time the invention was made.

10. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Peter Szekely whose telephone number is (703) 308-2460. The examiner can normally be reached on 7:00 a.m.-5:30 p.m. Tuesday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (703) 306-2777. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Peter Szekely
Primary Examiner
Art Unit 1714

P.S.
August 4, 2003